

Exhibit 1

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Dey, Inc., et al.,
Civil Action No. 05-11084-PBS

Exhibit to the July 24, 2009, Declaration of George B. Henderson, II
In Support of Plaintiffs' Motion For Partial Summary Judgment
and In Opposition To Dey's Motion For Partial Summary Judgment

Selenati, Helen - May 4, 2005 09:06:00 a.m.

1:1 IN THE COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA
2 THE STATE OF FLORIDA)
3) ex rel.)
4))
5 VEN-A-CARE OF THE) FLORIDA KEYS, INC.,)
6 a Florida Corporation, by) and through its principal)
7 officers and directors,) ZACHARY T. BENTLEY and)
8 T. MARK JONES,))
9 Plaintiffs,))
10 VS.) CIVIL ACTION NO.) 98-3032A
11 BOEHRINGER INGELHEIM) CORPORATION; DEY, INC.; DEY,)
12 L.P.; EMD PHARMACEUTICALS,) INC.; LIPHA, S.A.; MERCK,)
13 KGaA; MERCK-LIPHA, S.A.;) SCHERING CORPORATION;)
14 SCHERING-PLough CORPORATION;) ROXANE LABORATORIES, INC.;)
15 and WARRICK PHARMACEUTICALS) CORPORATION,)
16 Defendants.)
17
18 *-*-*-*-*
19
20
21 VIDEOTAPED DEPOSITION OF HELEN SELENATI
22 Volume 1
23
24
25

Selenati, Helen - May 4, 2005 09:06:00 a.m.

2:1 On the 4th day of May, 2005, between the
2 hours of 9:06 a.m. and 4:59 p.m., at the Marriott San
3 Mateo San Francisco Airport, 1770 South Amphlett
4 Boulevard, San Mateo, California, before me, CYNTHIA
5 VOHLKEN, a Certified Shorthand Reporter for the State
6 of Texas, appeared HELEN SELENATI, who, being by me
7 first duly sworn, gave an oral deposition at the
8 instance of the Plaintiffs in said cause, pursuant to
9 the Florida Rules of Civil Procedure.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Selenati, Helen - May 4, 2005 09:06:00 a.m.

13:1 until '89 when I moved to the United States.

2 And I got a job with a company called
3 Oscor Medical in Palm Harbor, Florida, and I worked
4 for them for a year. And then I was employed by Dey
5 Labs from 1990 to '95. And then from '95 to 2000 I
6 worked for Inhale Therapeutic Systems here in Palo
7 Alto or San Carlos. And then I left in 2000 to pursue
8 my studies and my new career in psychotherapy and
9 coaching.

10 Q. Let me ask you a bit about your -- your
11 experiences with Dey Laboratories. You started there
12 in 1990?

13 A. Correct.

14 Q. What was your title?

15 A. I was marketing manager.

16 Q. And was that the same title that you had
17 throughout your five-year tenure?

18 A. Correct.

19 Q. In general what were your -- what were your
20 duties? What did the marketing manager at Dey
21 Laboratories do?

22 A. Well, initially when I started I was the only
23 person in the marketing department, so I -- I did a
24 lot more than -- my responsibilities covered
25 everything in the marketing department. I -- my main

Selenati, Helen - May 4, 2005 09:06:00 a.m.

14:1 focus was on promotional materials, creating
2 promotional materials for the sales force to use.
3 Also in organizing the trade shows, our attendance at
4 trade shows. I also trained the sales force on the
5 clinical aspects of our drugs and how they worked
6 and -- so that they had a background of the clinical
7 way in which these drugs operated.

8 Q. And you had stated that your duties grew over
9 the five years that -- while you were --

10 A. Well, my --

11 Q. -- a marketing manager throughout the entire
12 period. You had kind of ended your -- your first
13 sentence saying, at first when I started that's what I
14 did. Did your duties change over the five years?

15 A. Well, I had more responsibilities in that by
16 the time I left Dey I had two product managers
17 reporting to me, as well as a market research person,
18 a convention coordinator and admin assistant.

19 Q. Did your job change appreciably when you got
20 in your department reporting to you the two product
21 managers, the market researcher and the convention
22 coordinator and the administrative assistant or did
23 you simply get more help doing what you had originally
24 been doing?

25 A. I got more help doing what I was originally

Selenati, Helen - May 4, 2005 09:06:00 a.m.

15:1 doing, but my day-to-day functioning was more in
2 management rather than the day to day creations of
3 promotional materials and attendance at conventions,
4 and so forth.

5 Q. I see. What were the names of the people who
6 reported to you, the two product managers, the market
7 researcher, the convention coordinator and the
8 administrative assistant?

9 A. The first product manager that I employed was
10 Rob Ellis and then Todd Galles. Eve Fagrell Gmeiner
11 was my market research person. Carrie Jackson was the
12 convention coordinator and Margarita Flores was my
13 admin assistant when I left.

14 Q. And who did you report to when you began at
15 Dey Laboratories in 1990?

16 A. I reported to Bob Mozak.

17 Q. Is that who you reported to by the time you
18 had left in 1995?

19 A. Correct.

20 Q. What was Mr. Mozak's title?

21 A. He was vice president of sales and marketing
22 at that time.

23 Q. And you say at that time. Did his title
24 change while you were there?

25 A. Well, after -- after I left he became

Selenati, Helen - May 4, 2005 09:06:00 a.m.

18:1 them and that's what they did. They managed the
2 company.

3 Q. Do you know what other direct reports the CEO
4 had other than Mr. Mozak?

5 A. Gosh, if I can think of all the departments.
6 Well, there was a person in charge of regulatory and
7 clinical development, so he had that vice president
8 reporting to him. Production reported to him.
9 Quality assurance reported to him, sales and marketing
10 reported to him, operations, the warehouse and we had
11 a facility down in Dallas. The manager of the Dallas
12 facility, which was mostly a warehousing facility,
13 reported in to him. I don't know whether I've left
14 anything out, but every -- every function reported in
15 to him.

16 Q. Was there a chief financial officer that
17 reported also to the CEO?

18 A. Oh, correct, yes. Finance department.

19 Q. Well, let me continue working my way up. If
20 the CEO was the ultimate chief of -- do you need to
21 take a break?

22 A. No. It's just the air conditioner. It's
23 okay. I'm okay to go.

24 Q. Okay. I was going to say, let me know if
25 you're cold or -- or hot or you need a break.

Selenati, Helen - May 4, 2005 09:06:00 a.m.

19:1 Let's continue working our way up the --
2 the corporate ladder. If the ultimate head of Dey
3 Laboratories is the CEO -- is Dey Laboratories a
4 stand-alone corporation or is it -- is it a subsidiary
5 of another corporation, do you know?

6 MR. ESCOBAR: Objection to the form.

7 THE WITNESS: I beg your pardon?

8 MR. ESCOBAR: I'm objecting. Maybe we
9 should just note on the record that the witness is
10 obviously not represented by counsel, so she may not
11 be familiar with the deposition roles of everybody
12 here.

13 You'll probably hear objections from me
14 or other counsel here occasionally. We have to object
15 if we find Mr. Thomas' question to be -- have some
16 flaw, be misleading or otherwise preserve the
17 objection for later use at a trial. So you'll
18 occasionally hear us object and the objection is
19 directed more at Mr. Thomas.

20 Q. (BY MR. THOMAS) And, of course, if you can
21 answer the question, please do.

22 MR. McDONALD: And, Mark, can we agree
23 that an objection by one is good for all, so we don't
24 all need to keep trying to --

25 MR. THOMAS: That's fine. That's fine.

Selenati, Helen - May 4, 2005 09:06:00 a.m.

20:1 A. So what are you saying, that I can still
2 answer the question?

3 Q. (BY MR. THOMAS) Yes. It's merely an
4 objection, but -- but just -- just to get it back on
5 the record again. From your understanding while you
6 were at Dey from '90 to 1995, was -- again, pursuant
7 to your understanding and recollection, was Dey a
8 stand-alone corporation or was it owned by any other
9 corporations? Was it affiliated with any
10 corporations? Did have it a parent?

11 MR. ESCOBAR: Objection.

12 A. It had a parent company in that it belonged
13 to -- Lipha Pharmaceuticals purchased Dey and then
14 later Lipha was acquired by Merck in Germany.

15 Q. (BY MR. THOMAS) This purchase of Dey by
16 Lipha, did that occur while you were there, sometime
17 between 1990 and 1995, do you recall?

18 A. I think it had just happened when I joined
19 the company because Jean-Pierre was already onboard
20 when I arrived in Napa.

21 Q. Was there any relationship at all between
22 Lipha purchasing the company and Jean-Pierre Termier
23 leaving and Charles Rice taking his place?

24 A. No.

25 MR. ESCOBAR: Objection.

Selenati, Helen - May 4, 2005 09:06:00 a.m.

21:1 A. Jean-Pierre -- Jean-Pierre was the CEO that
2 was -- he was employed by Lipha to come and run the
3 company.

4 Q. I see. And while you were at Dey from '90 to
5 '95, is that a reasonable time frame pursuant to your
6 recollection of the time when Merck purchased Lipha?

7 A. Well, somewhere in between there Lipha --
8 Merck purchased Lipha.

9 Q. Okay. So your basic understanding is that
10 while you were there Dey was owned by Lipha, Lipha was
11 owned by Merck?

12 MR. ESCOBAR: Objection.

13 A. Lipha became owned by Merck somewhere along
14 the way, yeah.

15 Q. (BY MR. THOMAS) Do you have any idea what
16 the reporting relationship of Mr. Termier and Mr. Rice
17 were from Dey up through Lipha, Merck?

18 MR. ESCOBAR: Objection.

19 A. Well, in the beginning Charles Rice reported
20 to Jean-Pierre Termier when he was in charge of
21 production and then later when Jean-Pierre moved back
22 to France, Charles Rice took over as CEO at Dey. And
23 I don't know whether he then still reported in to
24 Jean-Pierre at Lipha, but I do know that Jean-Pierre
25 on occasion still visited at Dey and so I'm assuming

Selenati, Helen - May 4, 2005 09:06:00 a.m.

42:1 responsibilities was to report prices to the
2 databases. Is that a fair characterization?

3 A. Correct.

4 Q. What do you mean by that? What prices were
5 reported and what are databases?

6 A. Well, databases kept -- well, they reported
7 prices of all pharmaceutical products. Everybody was
8 listed in this database. If you had a product that
9 was sold in the pharmaceutical industry it was listed
10 in this database. And pharmacies and chain stores and
11 other avenues of trade in the pharmaceutical industry
12 would refer to these databases for product numbers,
13 product pricing, and so forth.

14 MR. McDONALD: Objection, nonresponsive.

15 Q. (BY MR. THOMAS) When you say everybody, are
16 you referring to pharmaceutical manufacturers?

17 A. Yes. They would be part of everybody.

18 Q. And when you say "they would report," persons
19 to your knowledge with your functions in other
20 corporations would be reporting prices to the
21 databases; is that your understanding?

22 MR. ESCOBAR: Objection, no foundation.

23 I actually don't even understand the question.

24 A. I don't know what functions would report the
25 prices into the databases. I know that that was part

Selenati, Helen - May 4, 2005 09:06:00 a.m.

43:1 of my responsibility because it happened as part of
2 the launch plan, but I don't know who in the other
3 companies would report that.

4 Q. (BY MR. THOMAS) And you said databases, so
5 there's more than one?

6 A. Correct.

7 Q. Do you know the names of any of them?

8 A. Can I refer to my notes?

9 Q. Absolutely. Mr. Escobar may want to take a
10 look at what it is that you're referring to, but feel
11 free to reference anything that you've brought with
12 you today.

13 MR. ESCOBAR: Maybe you can arrange,
14 Mr. Thomas, for a copy of the materials that the
15 witness refers to. It would be useful for us to have.

16 MR. THOMAS: Surely, Mr. Escobar, we'll
17 do that.

18 A. Well, I don't know where -- where it is right
19 now.

20 Q. (BY MR. THOMAS) Take your time.

21 A. It was First DataBank was the one and I can't
22 remember the name of the other data bank. First
23 DataBank was the one.

24 Q. Would Medi-Span be one of the companies?

25 A. Correct. Medi-Span would be one of the

Selenati, Helen - May 4, 2005 09:06:00 a.m.

44:1 companies.

2 Q. Medical Economics?

3 A. And Medical Economics was the other one,
4 yeah.

5 Q. So these are --

6 A. Thank you.

7 Q. These are external entities that -- that are
8 not owned by Dey, don't own Dey?

9 A. That's correct.

10 Q. To your knowledge, what do these databases do
11 with the prices that you had reported to them?

12 MR. ESCOBAR: Objection, no foundation.

13 A. Well, they publish them in something called a
14 Redbook or a Bluebook.

15 Q. (BY MR. THOMAS) And what was the purpose of
16 publishing the prices, do you know?

17 MR. ESCOBAR: Objection, no foundation,
18 asking for speculation.

19 A. I don't know.

20 Q. (BY MR. THOMAS) Have you ever heard the term
21 "AWP"?

22 A. Yes, I have.

23 Q. It's an acronym?

24 A. Yes, it is. It stands for average wholesale
25 price.

Selenati, Helen - May 4, 2005 09:06:00 a.m.

66:1 Q. Was Mr. Termier, do you know?

2 A. Yes, he sure was.

3 Q. How about Mr. Rice, was he aware of the
4 Medicaid program?

5 A. Yes, he was.

6 Q. Could you offer to what degree Mr. Mozak was
7 aware of the Medicaid program? Did you have any
8 discussions with him as to any details regarding the
9 Medicaid program?

10 MR. ESCOBAR: Objection to the form.

11 Kind of a broad question. You're asking her to
12 speculate, also, about somebody else.

13 MR. THOMAS: Thank you, Counsel.

14 A. Well, Mr. Mozak and I had frequent
15 discussions about the Medicaid program, especially
16 when it came -- when it concerned reimbursement issues
17 and when it concerned the spread and when it concerned
18 how we were going to position our pricing in the
19 marketplace. Medicaid and Medicare came up as
20 discussion points.

21 Q. (BY MR. THOMAS) Did you have any similar
22 conversations with Mr. Termier?

23 MR. ESCOBAR: Objection to the form.

24 A. No, I didn't.

25 Q. (BY MR. THOMAS) Did you have any similar

Selenati, Helen - May 4, 2005 09:06:00 a.m.

67:1 conversations with Mr. Rice?

2 A. No, I didn't personally.

3 Q. Are you aware of any conversations Mr. Mozak
4 might have had with Mr. Rice?

5 A. No, I -- not -- no, not firsthand knowledge.

6 Q. Can you offer for us today your basic
7 understanding of how it is that Medicaid is reimbursed
8 for the pharmaceuticals that are dispensed to Medicaid
9 recipients?

10 MR. ESCOBAR: Objection to the form.

11 Can I -- can I just hear the question again --

12 (Requested portion was read)

13 MR. ESCOBAR: Objection to the question.

14 Q. (BY MR. THOMAS) Can you answer? Would you
15 like me to ask it again?

16 A. Well --

17 Q. I would be happy to.

18 A. Sure. Ask it again, but -- yeah.

19 Reimbursement to whom for what?

20 Q. I'm just trying to get some sense as to what
21 your appreciation, understanding is how you perceive
22 it is that the state Medicaid programs in general
23 reimburse for pharmaceuticals. So could you offer for
24 us just in general some sense as to how Medicaid pays?

25 MR. ESCOBAR: Again, I object. It's way

Selenati, Helen - May 4, 2005 09:06:00 a.m.

68:1 overbroad. It covers 50 states, covers many years.

2 I'm not sure how anybody could answer that, but --

3 MR. THOMAS: Thank you.

4 MR. ESCOBAR: -- objection.

5 Q. (BY MR. THOMAS) Let me re-ask.

6 A. Yeah.

7 Q. Are you aware if Medicaid ever reimburses --
8 a Medicaid program may ever reimburse based upon AWP?

9 A. I think that was what was -- when I first
10 arrived at Dey that is how Medicaid reimbursed
11 providers of services for drugs that were dispensed to
12 Medicaid patients. They used to use the AWP plus some
13 formula applied to that for reimbursement purposes.

14 Q. Are you aware if any of the Medicaid programs
15 ever utilize wholesaler acquisition cost as a basis
16 for reimbursement?

17 A. I think there were some states that used
18 wholesale acquisition cost later on.

19 Q. Is it your understanding that Medicaid bases
20 its reimbursement based upon estimated acquisition
21 cost of the pharmaceutical by the Medicaid provider?

22 MR. ESCOBAR: Objection to the form.

23 A. Can you say that again?

24 MR. THOMAS: Could you please read that
25 last question?

Selenati, Helen - May 4, 2005 09:06:00 a.m.

69:1 THE REPORTER: You were covering your

2 mouth --

3 MR. THOMAS: Sure.

4 THE REPORTER: -- so I had real hard

5 time, so can you repeat it? I got behind on it.

6 Q. (BY MR. THOMAS) Is it your understanding,
7 Ms. Selenati, that Medicaid programs in general
8 attempt to estimate the acquisition cost of Medicaid
9 providers in the dispensing of pharmaceuticals?

10 MR. ESCOBAR: Objection to the form.

11 And I think that's a misleading question, Mr. Thomas.

12 MR. THOMAS: Thank you, Counselor.

13 A. Well, I think Medicaid would like to
14 reimburse the providers for -- for the acquisition
15 cost of the product, plus some added profit for their
16 efforts and for their overheads.

17 Q. (BY MR. THOMAS) I would like to show you
18 what's been marked as Exhibit 9 in the Pamela Marrs
19 deposition.

20 A. (Witness reviewing document). Okay.

21 Q. Have you ever seen that document before?

22 A. I have not seen it before, no.

23 Q. It's entitled "Dey Laboratories, Inc.
24 Memorandum"; is that correct?

25 A. Correct.

Selenati, Helen - May 4, 2005 09:06:00 a.m.

70:1 Q. To Pam Marrs, Charles Rice, Jean-Pierre

2 Termier; is that correct?

3 A. Correct.

4 Q. From Robert F. Mozak?

5 A. Correct.

6 Q. Dated February 24, 1992.

7 A. Correct.

8 Q. Let me read the first sentence, if I may,

9 into the record. "Although the pricing strategy will
10 be reviewed at the March 6 meeting, I thought you
11 would be interested in reviewing it sooner in light of
12 the earlier approval" -- "approval of Albuterol." Do
13 you think this relates to the introduction of the Dey
14 Albuterol product that you had mentioned in response
15 to one of my earlier questions in early 1992?

16 A. Yes, it does.

17 Q. Do you think the March 6th meeting refers to
18 a pricing committee meeting?

19 MR. ESCOBAR: Objection to the form.

20 A. I don't know what meeting that was. It could
21 have been a meeting between Pam Marrs, Charles Rice
22 and Jean-Pierre because other people from the pricing
23 committee were not copied on this memo. So if it was
24 to go to the pricing committee, if it -- if March 6th
25 referred to a pricing committee meeting, I would have

Selenati, Helen - May 4, 2005 09:06:00 a.m.

71:1 imagined that Mark Pope's name would have been on here
2 and Cindy Daulong's name would have been on here as
3 well. So I think this might have been an executive
4 meeting about the pricing strategy and the -- and the
5 launch.

6 Q. At the time that this memo went out is it
7 correct to state that Pam Marrs was the chief
8 financial officer?

9 A. Correct.

10 Q. Jean-Pierre Termier was the chief executive
11 officer?

12 A. Correct.

13 Q. Was Charles Rice the head of production at
14 the time of the memo?

15 A. Well, he was in charge of production. There
16 was a stage there where Charles sort of got an interim
17 promotion and I don't really know what his title was
18 there, you know. But, yeah, he was -- he was heading
19 up towards becoming part of the top executive team,
20 but he was still in charge of production, yes.

21 Q. And at the time Mr. Mozak was the vice
22 president of sales and marketing?

23 A. That's correct.

24 Q. Let me take you to the second page of the
25 Marrs Exhibit Number 9, if I might. The third

Selenati, Helen - May 4, 2005 09:06:00 a.m.

72:1 paragraph on the page, the third bullet. Let me read
2 it into the record. "To provide incentive to
3 retail/chain providers to use Dey's Albuterol UD by
4 increasing the spread on Medicare" dash -- sorry,
5 "/Medicaid reimbursements." Do you see that bullet
6 item?

7 A. Yes, I do.

8 Q. Let me ask you a couple of questions about
9 that. What does UD stand for after Albuterol, do you
10 know?

11 A. Unit dose.

12 Q. You had mentioned the word "spread" in
13 response to a question of mine I think three questions
14 ago. I also see the word "spread" in that bullet that
15 we're just talking about in the third line, "by
16 increasing the spread." What does that mean to you?

17 MR. ESCOBAR: Objection to the form.

18 A. Spread means the differential between what a
19 provider paid for the product and what a provider
20 would be reimbursed for the product. That's commonly
21 known as the spread. So that would be the gross
22 profit margin.

23 Q. (BY MR. THOMAS) Okay. The second bullet
24 item on the page, "To seek long-term (3 years)
25 agreements with major purchasing groups for all Dey

Selenati, Helen - May 4, 2005 09:06:00 a.m.

73:1 products through leveraging of Albuterol UD." Do you
2 see that bullet item?

3 A. Yes, I do.

4 Q. Were you involved at all with any initiative
5 at Dey that that bullet refers to?

6 A. No. That was a contracts department
7 function.

8 Q. Let me move you two pages back, "Pricing
9 Strategies." By the way, did you help write any of
10 the contracts?

11 MR. ESCOBAR: Two pages back takes us
12 out of the exhibit, yes?

13 MR. THOMAS: It is Texas Bates number
14 0090854.

15 MR. ESCOBAR: So two pages forward,
16 okay.

17 Q. (BY MR. THOMAS) The fourth page of the
18 five-page exhibit.

19 A. Okay. Got it.

20 Q. "Pricing Strategies." If I can read the
21 first one into the record, number one. "Increase the
22 spread to retail/homecare accounts by lowering
23 acquisition cost more than AWP." What does that mean,
24 do you know?

25 MR. ESCOBAR: Objection to the form,

Selenati, Helen - May 4, 2005 09:06:00 a.m.

74:1 foundation.

2 A. Well, this refers to maximizing the spread
3 for the retail pharm -- for the retail and home
4 healthcare pharmacies. So by lowering the acquisition
5 cost to below the AWP, which is the -- the -- the --
6 the industry standard that was then used to calculate
7 reimbursement, you were maximizing the spread if you
8 lowered the acquisition cost and kept the AWP at an
9 elevated level.

10 Q. (BY MR. THOMAS) I'll read the second bullet
11 item. "Pharmacy/chain bid range \$23.95-\$26.50 (AVG.
12 \$25.95) will increase spread for retail and provide
13 Dey with highest profit." As you just did with the
14 first bullet, can you give me your understanding of
15 what the second bullet means?

16 MR. ESCOBAR: Objection to the form.

17 A. It's my understanding that the for means
18 that -- that the bullet means that if Dey kept its
19 price to pharmacy and chains at an average price of
20 25.95, we would -- Dey would be provided with the
21 highest profit and we will also be allowing our
22 pharmacy and chain customers in the retail trade to
23 make an increased spread.

24 Q. (BY MR. THOMAS) Let me go back to one item
25 that I asked you about three questions previous. Is

Selenati, Helen - May 4, 2005 09:06:00 a.m.

75:1 it your understanding that the Medicaid programs in
2 any states utilized reported prices like AWP and WAC
3 as a basis for estimating pharmacy acquisition cost?

4 MR. ESCOBAR: Objection to the form.

5 A. Yes. States commonly used AWP and WAC to
6 calculate our reimbursement.

7 Q. (BY MR. THOMAS) Would that to your
8 understanding represent the top portion of what you
9 had just described as spread?

10 MR. ESCOBAR: Objection to the form.

11 A. Would what represent the top portion?

12 Q. (BY MR. THOMAS) The reported prices to
13 include WAC and AWP.

14 A. I don't understand the question.

15 Q. Surely. Let me ask it again. You had just
16 noted that per your understanding Medicaid utilized
17 reported prices to include WAC and AWP as a basis to
18 estimate the acquisition cost of pharmaceutical
19 products --

20 A. I said they --

21 Q. -- to Medicaid providers?

22 A. -- they used WAC and AWP to calculate the
23 reimbursement.

24 Q. Would that calculated reimbursement represent
25 the top half of the price spread that you had just

Selenati, Helen - May 4, 2005 09:06:00 a.m.

76:1 mentioned?

2 A. That's right.

3 MR. ESCOBAR: Objection to the form.

4 Q. (BY MR. THOMAS) Let me direct you to what's
5 been previously marked as Exhibit 571 in the Charles
6 Rice deposition. If we could --

7 THE REPORTER: That's Texas.

8 MS. MILLER: It's Texas.

9 Q. (BY MR. THOMAS) Which is being marked as
10 Florida Exhibit Number 39.

11 (Exhibit 39 marked)

12 A. (Witness reviewing document). Okay. I've
13 reviewed it.

14 Q. (BY MR. THOMAS) Does this document look
15 familiar to you?

16 A. Well, yes.

17 Q. You've seen it before?

18 A. Yes, I have.

19 Q. Does it appear that you authored it?

20 A. It appears so.

21 Q. On or about May 29, 1992?

22 A. Correct.

23 Q. Included on the copy list were Pam Marrs,
24 Mr. Mozak, Mark Pope, Charles Rice, Mr. Termier?

25 A. Correct.

Selenati, Helen - May 4, 2005 09:06:00 a.m.

77:1 Q. If I could direct you to the second page of
2 that exhibit, the very last paragraph. The very last
3 sentence.

4 A. Yes.

5 Q. "Our spread between pharmacy direct price and
6 AWP remains very competitive even with the reduction
7 in AWP."

8 A. That's correct.

9 Q. What's your interpretation of that?

10 MR. ESCOBAR: Objection to the form.

11 A. Well, we -- it appears that we had to reduce
12 our AWP price in order to be 10 percent below the
13 originator company's AWP and so this would then give
14 us generic product status. And even though we had
15 reduced the AWP, we still maintained a good profit
16 margin for our pharmacy customers even though we
17 reduced the AWP and it was competitive compared to our
18 other competitor -- competitors on the -- in the
19 marketplace. So our spread was better than everybody
20 else's, or competitive at least.

21 Q. (BY MR. THOMAS) Let me ask you a question or
22 two about spread. Do you understand that spread is
23 important to your customers?

24 MR. McDONALD: Object to the form.

25 A. Yes, it was very important to our customers.

Selenati, Helen - May 4, 2005 09:06:00 a.m.

78:1 Q. (BY MR. THOMAS) How so?

2 A. Well, that's where they derived their profit
3 from.

4 Q. How did you come to know that this is
5 important to your customers, spread?

6 A. Well, it was part of everything that was ever
7 discussed at Dey. From the very beginning that I got
8 there was -- it was important to keep the spread
9 competitive with everybody else's. It wasn't that
10 important at what price the customer bought the
11 product, it was important that they got a -- enjoyed a
12 good spread between their acquisition price and their
13 reimbursed price. So it was something that was part
14 of every discussion about pricing, about products,
15 about competition, about market share. It -- it was
16 part of every discussion.

17 Q. Did you have any conversations that you
18 recall with Mr. Mozak regarding spread?

19 A. Many conversations.

20 Q. Did you ever have any conversations with
21 Mr. Rice regarding spread?

22 A. No.

23 Q. Let me show you next what's been previously
24 marked in the Pamela Marrs Deposition Exhibit Number
25 33.

Selenati, Helen - May 4, 2005 09:06:00 a.m.

79:1 A. (Witness reviewing document). Okay. I've
2 reviewed it.

3 Q. Do you recall ever seeing this document
4 before?

5 A. Yes, I do.

6 Q. It appears to be from Rob Ellis?

7 A. Correct.

8 Q. That's the same Robert Ellis that was the
9 product manager who reported to you in the marketing
10 department?

11 A. Correct.

12 Q. You were copied on this?

13 A. Yes, I was.

14 Q. As was Mr. Mozak and Mr. Rice?

15 A. Correct.

16 Q. The regarding line says, "Copley's Albuterol
17 Pricing." Who or what is Copley?

18 A. Copley was a competitor that came out with a
19 generic equivalent.

20 Q. On the second page of the document is a
21 lengthy distribution list. From what you can tell
22 from the document these are the people that got this
23 memo?

24 A. Correct. Yeah. We had a distribution list
25 that was always just called distribution and that

Selenati, Helen - May 4, 2005 09:06:00 a.m.

80:1 would normally be sales and marketing people and
2 without having to always put out everybody's name on
3 the memo front we used to have "To distribution" and
4 everybody else who wasn't on the distribution list
5 would be cc'd on the memo. So this was common
6 practice.

7 Q. Let me direct your attention to the graphic
8 in the middle of the page. On the horizon column
9 "Copley" and "Dey"?

10 A. Yes.

11 Q. And the vertical "Wholesale Price," "AWP" and
12 "Spread"?

13 A. Yes.

14 Q. Is it correct to state that pursuant to this
15 memorandum the Copley wholesale price of Albuterol is
16 stated to be \$19.50 with an AWP of \$32?

17 A. Yes.

18 Q. The difference between those, \$12.50?

19 A. That's correct.

20 Q. Would this appear to be the spread between
21 those two?

22 A. That's correct.

23 Q. And then dropping down one line. The Dey
24 wholesale price, would that appear to be \$18.95?

25 A. Correct.

Selenati, Helen - May 4, 2005 09:06:00 a.m.

81:1 Q. And the AWP at \$32.30?

2 A. Correct.

3 Q. The difference between those two, the spread,
4 would be \$13.35?

5 A. Correct.

6 Q. Is it your understanding that the profit to
7 the purchaser of the Albuterol would be the spread as
8 demonstrated here?

9 A. That's correct.

10 Q. From what you can tell in the memo?

11 A. That's correct.

12 Q. The Dey's spread, the Dey's profit on the
13 drug would be greater than that of Copley?

14 A. That would be correct.

15 Q. You had mentioned discussions with Mr. Mozak
16 of spread. You had discussions regarding spread with
17 other employees at Dey?

18 A. Correct.

19 Q. Do you recall ever having any discussions
20 with Bob Pallas about spread?

21 A. Oh, yes.

22 Q. How about with Ross Uhl?

23 A. Oh, yes.

24 Q. Pamela Marrs?

25 A. Not in particular. I don't remember any

Selenati, Helen - May 4, 2005 09:06:00 a.m.

109:1 A. It appears from this memo that Rob Ellis
2 might have adjusted the AWP of Dey's product in the
3 upwards direction to improve the spread for our
4 customers on the Dey product.

5 Q. (BY MR. THOMAS) Okay. Did Dey consider
6 Warrick more of a competitor on Albuterol than Copley?

7 MR. ESCOBAR: Objection.

8 MR. McDONALD: Object to the form.

9 A. Oh, they were both competitors of -- we
10 didn't rank our competitors. Anybody was a threat at
11 any time depending on where they came out with
12 pricing.

13 Q. (BY MR. THOMAS) Let me ask you a couple of
14 questions about WAC. Did Dey adjust its WAC prices in
15 relationship to WAC pricing for any Warrick Albuterol
16 products?

17 MR. ESCOBAR: Objection to the form.

18 A. Can you say that again?

19 Q. (BY MR. THOMAS) Surely. Did Dey adjust its
20 WACs on Albuterol on account of WAC prices on Warrick
21 Albuterol?

22 MR. McDONALD: Object to the form.

23 MR. ESCOBAR: Objection to the form.

24 A. Yes. When -- when the Florida situation
25 happened where Warrick was taking away business from

Selenati, Helen - May 4, 2005 09:06:00 a.m.

110:1 us we did increase our WAC in order to be competitive
2 with the Warrick spread.

3 Q. Do you recall --

4 MR. McDONALD: Objection, nonresponsive.

5 Q. (BY MR. THOMAS) Do you recall when that was,
6 approximately, what date?

7 A. Somewhere around the middle of '95.

8 Q. How did Dey become aware of Warrick's WAC
9 pricing?

10 A. I think it was Ross Uhl that brought it to
11 our attention that one of his clients was no longer
12 buying the Dey product and they were quite a large
13 customer of Dey's and we were concerned about the
14 situation and we were concerned that this might be a
15 trend that we were going to lose out on some of the
16 larger customers.

17 MR. McDONALD: Objection, nonresponsive.

18 Q. (BY MR. THOMAS) Is it your understanding
19 that in that time period, in the middle of '95,
20 pursuant to communications from Ross Uhl that the
21 spread on Warrick's Albuterol was higher, larger than
22 the spread on Dey's Albuterol?

23 MR. McDONALD: Object to the form.

24 A. That was correct.

25 Q. (BY MR. THOMAS) Was Dey's adjustment

Selenati, Helen - May 4, 2005 09:06:00 a.m.

111:1 successful?

2 MR. ESCOBAR: Objection to the form.

3 A. The adjustment in the -- the upward
4 adjustment in the WAC, was that successful --

5 Q. (BY MR. THOMAS) Yes.

6 A. -- is that what you're asking me?

7 Q. Yes.

8 A. Yes, it was successful.

9 Q. How do you know?

10 A. Well, after we adjusted the WAC all the
11 commotion in the sales force died down and everybody
12 seemed to be happy and able to compete again in the
13 marketplace.

14 Q. Did you ever have any conversations with
15 employees at competitors regarding spreads on drugs?

16 A. No, never.

17 Q. Is it your understanding or belief that
18 your -- that Dey's competitors were concerned about
19 spreads on drugs?

20 MR. ESCOBAR: Objection to the form.

21 MR. McDONALD: Object to the form.

22 A. I never had any personal knowledge of that,
23 but that was what was reported from the sales force,
24 that that was the main selling angle that they used
25 with their customers.

Selenati, Helen - May 4, 2005 09:06:00 a.m.

112:1 MR. McDONALD: Objection, nonresponsive.

2 Q. (BY MR. THOMAS) Do you recall any specific
3 conversations with any of the internal or external
4 sales executives regarding how Dey's competitors
5 viewed spread on drugs?

6 MR. ESCOBAR: Objection to the form.

7 A. Well, not specific conversations. As I said,
8 these are -- oh, God, this was, you know, 12, 15 years
9 ago and I know there were lots of general
10 conversations, but any specific conversation that I
11 recall, no. It was such a common industry practice.
12 It was part of everyday conversation in managers'
13 meetings and sales meetings that this is the way the
14 product was sold and, you know. As a marketing person
15 I wished that they had sold it on features and
16 benefits because that's what I produced all the
17 marketing materials around, but clearly the game was
18 played on price.

19 Q. And that was going to be --

20 MR. McDONALD: Objection, nonresponsive.

21 Q. (BY MR. THOMAS) That was going to be my next
22 question. We've talked a lot about the -- the impact
23 of spread on -- on marketing and the attractiveness of
24 manufacturers' products to customers. What else is
25 there? You as a marketing executive, what else did

Selenati, Helen - May 4, 2005 09:06:00 a.m.

113:1 you rely upon to sell Dey's drugs?

2 MR. ESCOBAR: Objection to the form.

3 A. Well, initially when we launched Albuterol it
4 had many benefits over the Schering and the Ventolin
5 product from Glaxo in terms that it was a unit-dose
6 that was manufactured in a form-filled sealed format
7 which made it sterile so we didn't have to use any
8 preservatives. And it was proved that some of the
9 preservatives that were added to the unit-dose that
10 Schering and Glaxo was selling caused actually
11 bronchoconstriction in asthmatic patients. And, I
12 mean, this product was prescribed to dilate the
13 bronchials of asthmatic patients, so why would you
14 want to put a preservative in there that did the
15 opposite.

16 And, also, the other -- the competitor's
17 products were very difficult to open. It was tiny
18 little screw cap bottles and the elderly patients with
19 arthritic fingers had difficulty in opening these
20 products, so our vials were very easy twist-open caps.

21 As opposed to the multi-dose product,
22 there was no measuring required, so, therefore, the
23 clients weren't -- the patients weren't -- you weren't
24 relying on the patient's accuracy for measuring out
25 the doses. So we had quite a few benefits in that

Selenati, Helen - May 4, 2005 09:06:00 a.m.

114:1 regard.

2 Q. (BY MR. THOMAS) Is it your understanding
3 that any of Dey's customers relied upon those
4 nonspread marketing efforts?

5 MR. ESCOBAR: Objection to the form.

6 A. In the beginning they definitely did.

7 Q. (BY MR. THOMAS) And then after the
8 beginning?

9 MR. ESCOBAR: Objection to the form.

10 A. Well, once competitors entered the market,
11 then pricing became an issue. Because in the
12 beginning all you were trying to do was convert --
13 convert users from preserved unit-dose to a
14 nonpreserved unit-dose with an easier opening
15 mechanism. But once generic competition came onto the
16 market, it was all about price.

17 Q. (BY MR. THOMAS) And is it your belief that a
18 nonpreserved formulation is superior to a preserved
19 formulation?

20 A. Well, it's better for the patient.

21 Q. And why is that?

22 MR. McDONALD: Object to the form.

23 A. Because the preservatives that were put into
24 the unit-dose products was shown to be detrimental for
25 asthmatic patients.

Selenati, Helen - May 4, 2005 09:06:00 a.m.

115:1 Q. (BY MR. THOMAS) Were there any nonspread
2 advantages of the Dey's Albuterol product over the
3 Copley generic Albuterol product?

4 MR. ESCOBAR: Objection to the form.

5 A. You know, I don't even remember what Copley
6 looked like, whether it was the same little preserved
7 unit preserve dose. I don't even remember what
8 Copley's product looked like. At that stage there
9 were many competitors on the market and I -- I can't
10 remember what Copley's looked like.

11 Q. (BY MR. THOMAS) Were there any nonspread
12 advantages of the Dey generic Albuterol product over
13 the Warrick generic Albuterol product?

14 A. Yes, there was.

15 MR. McDONALD: Object to the form.

16 MR. ESCOBAR: Objection.

17 Q. (BY MR. THOMAS) What were those?

18 MR. McDONALD: Object to the form.

19 A. It was the sterile formulation that didn't
20 have preservative and the easy opening vials.

21 Q. (BY MR. THOMAS) If you could, let me direct
22 you to Exhibit Number 35 in the book in front of you
23 from the Pamela Marrs deposition. That's the big
24 composite exhibit where the first document is a
25 memorandum that you wrote and the second document is a

Selenati, Helen - May 4, 2005 09:06:00 a.m.

116:1 memorandum that your a direct report, Carrie Jackson,
2 wrote.

3 A. Yes, I've got -- which one do you want me to
4 look at?

5 Q. The Carrie Jackson report. Specifically if
6 you could turn to the page that's got Florida pricing
7 on it.

8 MR. McDONALD: Do you have a Bates
9 number?

10 MR. ESCOBAR: 905.

11 MR. McDONALD: Thank you.

12 MR. THOMAS: 905.

13 A. Okay. I've got it.

14 Q. (BY MR. THOMAS) Carrie Jackson was a direct
15 report to you?

16 A. That's correct.

17 Q. What's the purpose of this report that Carrie
18 Jackson wrote?

19 MR. ESCOBAR: Objection.

20 A. Well, this was to inform the salespeople in
21 adjustments that were made from time to time in
22 reimbursement formats, whether you needed to get your
23 product on the formulary, what Medicare was doing,
24 what Medicaid was reimbursing. It was to give the --
25 keep the sales force up-to-date what was happening in

Selenati, Helen - May 4, 2005 09:06:00 a.m.

117:1 each one of the states in terms of reimbursement.

2 Q. (BY MR. THOMAS) If I can get you to turn one
3 page forward to Bates page 90906.

4 A. I've got it.

5 Q. At the very top of the page, third line down.
6 Underneath the column entitled "Reimburse. Basis." I
7 assume that means reimbursement.

8 A. Yes.

9 Q. WAC plus seven percent.

10 A. Correct.

11 Q. What does that mean? What's the significance
12 of WAC plus seven percent?

13 A. Well, that's what the provider of the
14 medication to the patient was reimbursed by Medicaid
15 and that was the WAC price plus seven percent on top
16 of the WAC price.

17 Q. Okay. And that's -- comports with what you
18 had stated earlier, that WAC and AWP pricing is based
19 upon a statewide specific formula.

20 MR. ESCOBAR: Objection to the form.

21 MR. McDONALD: Object to the form.

22 A. Well, not statewide, but -- yeah, each
23 state --

24 Q. (BY MR. THOMAS) I'm sorry.

25 A. -- had their own formula.

Selenati, Helen - May 4, 2005 09:06:00 a.m.

134:1 A. No, I never went to a regional meeting, not
2 that I can recall.

3 MR. AZORSKY: Can I have this document
4 marked as Exhibit 41, please.

5 (Exhibit 41 marked)

6 Q. (BY MR. AZORSKY) Ms. Selenati, I've had a
7 document marked as Exhibit 41 and I'll ask you to take
8 a look and review that document.

9 A. (Witness reviewing document). Okay. I think
10 I've -- I've seen this.

11 Q. Okay. Can you identify this document?

12 A. Well, this looks very similar to a
13 presentation that Ross Uhl made at that national sales
14 meeting in -- at the Claremont Hotel.

15 Q. And the national sales meeting in the
16 Claremont Hotel was in 1994; is that correct?

17 A. That's correct.

18 Q. And this is dated Monday, January 24, 1994,
19 with the time of 12:00 p.m. to 1:00 p.m., correct?

20 A. Correct.

21 Q. So does that indicate to you that this was
22 a -- either a handout or a part of the presentation
23 that Mr. Uhl gave at that national sales meeting?

24 A. Well, I particularly recognize this one slide
25 with the question mark and all the acronyms on there.

Selenati, Helen - May 4, 2005 09:06:00 a.m.

135:1 I particularly remember that slide and I was impressed
2 with Ross Uhl's capabilities of doing, you know,
3 computer-generated slides. So I -- I, you know,
4 recognize some of these slides as overheads that were
5 presented at the national sales meeting.

6 Q. Does that indicate to you that this is --
7 that this document is -- is part of a presentation
8 that Mr. Uhl gave at that national sales meeting?

9 MR. ESCOBAR: Objection to the form.

10 A. That's -- that's what I think it is, yes.

11 Q. (BY MR. AZORSKY) And Mr. Uhl presented --
12 let me start that over. Mr. Uhl gave a presentation
13 at the national sales meeting in 1994 to --

14 A. Correct.

15 Q. -- to whom?

16 A. Well, it was everybody that was -- that
17 attended the national sales meeting. Starting at the
18 top, Bob Mozak. Well, Charles Rice was there. I
19 don't know whether he sat in on every single
20 presentation, but he certainly was a looming character
21 there. So Charles Rice, Bob Mozak, Bob Pallas, Bruce
22 Tipton, Cindy Daulong, myself, all my product
23 managers. If Eve was there at the time, Eve Fagrell,
24 she would have been in the audience as well. All the
25 regional sales managers and all the -- the field sales

Selenati, Helen - May 4, 2005 09:06:00 a.m.

154:1 A. Well, it would make me believe that this
2 could very well have been that presentation that was
3 presented at the meeting. But if Ross Uhl said he
4 presented at that meeting, I wouldn't question that.

5 Q. (BY MR. AZORSKY) Would you please turn to
6 Florida Exhibit 36?

7 A. Pam Marrs deposition 36.

8 Q. Yes.

9 A. Okay.

10 Q. Ms. Selenati, do you recognize the document
11 previously marked as Florida Exhibit 36?

12 A. Yes, I do.

13 Q. And what is that?

14 A. This was a commonly used sales aid that the
15 sales force used to demonstrate the profit that a
16 provider could make off our product, off the Dey
17 product, versus multi-dose.

18 Q. And how does this worksheet indicate that
19 such a profit would be made?

20 MR. ESCOBAR: Objection to the form.

21 A. Well, it's got the two profits compared at
22 the bottom here, the multi-dose estimated profit, and
23 then the Dey dose -- the Dey unit-dose estimated
24 profit. And then there would be a -- at the bottom
25 conclusion of this worksheet would be the gain in

Selenati, Helen - May 4, 2005 09:06:00 a.m.

155:1 profit with Dey unit-dose substitution would be the
2 result of deducting the profit made from the
3 multi-dose from the profit made from the Dey unit-dose
4 and that would be the gain in profit that the store or
5 the plan or the home healthcare pharmacy would make if
6 they switched to Dey unit-dose versus Albuterol
7 multi-dose.

8 Q. Well, let's take one side of this
9 reimbursement comparison worksheet. The left side is
10 entitled "Albuterol Multidose Bottles" 20 milligram;
11 is that correct?

12 A. 20 milliliters, yes.

13 Q. 20 milliliters. And the first item under
14 "Example" is what?

15 A. AWP is 12.5 per 20 mL bottle.

16 Q. And under that is?

17 A. Cost is \$5.75.

18 Q. And under that?

19 A. Reimbursement per bottle is AWP minus 30
20 percent, which calculates out to \$8.75. And this is
21 assuming 40 treatments per bottle.

22 Q. So is that calculating profit based upon the
23 spread between reimbursement and the cost of the
24 Albuterol multi-dose bottles?

25 MR. ESCOBAR: Objection to the form.

Selenati, Helen - May 4, 2005 09:06:00 a.m.

156:1 That section you just had her read?

2 MR. AZORSKY: The left side of this.

3 A. Yeah. It -- it doesn't calculate -- it only
4 tells you what the reimbursement is going to be. It
5 doesn't calculate the difference between the
6 reimbursement and the cost just yet.

7 Q. (BY MR. AZORSKY) Okay.

8 A. That happens further down the price sheet.

9 Q. Okay. Let's --

10 A. The worksheet.

11 Q. Let's go further down the worksheet. Next is
12 the reimbursements; is that correct?

13 A. That's right.

14 Q. And after reimbursements are calculated then
15 costs are calculated?

16 A. That's right.

17 Q. And then after that what is there,
18 "Annualized Per Patient"?

19 A. That's right.

20 Q. What does that refer to?

21 A. That means you're taking the doses that each
22 patient would take in a year and you calculate how
23 many doses that would be. And then you would multiply
24 that by the reimbursement per dose and the cost per
25 dose and you would come out with -- you'd -- you'd

Selenati, Helen - May 4, 2005 09:06:00 a.m.

157:1 land up with a multi-dose estimated profit.

2 Q. Well, when you say you -- you take the
3 treatments and you multiply it by the reimbursement
4 and the costs --

5 A. Uh-huh.

6 Q. -- how -- how are the costs -- costs are
7 subtracted from the total reimbursement; is that
8 correct?

9 MR. ESCOBAR: Objection to the form.

10 A. To -- to arrive at the estimated profit
11 that's -- that's what you have to do. You have to
12 deduct the cost from the total reimbursement.

13 Q. (BY MR. AZORSKY) So the profit is derived
14 from the spread between the reimbursement and the
15 cost?

16 MR. ESCOBAR: Objection to the form.

17 A. The profit is derived from the difference
18 between the reimbursement and the cost, yes.

19 Q. (BY MR. AZORSKY) How about on the right side
20 of the sheet with the Dey unit-dose Albuterol, how is
21 the profit calculated on that part of the worksheet?

22 MR. ESCOBAR: Objection. And I don't
23 think there is calculation there, at least not on my
24 copy.

25 A. Well, calculation is done in the same way.

Selenati, Helen - May 4, 2005 09:06:00 a.m.

158:1 Q. (BY MR. AZORSKY) There is a formula on -- on
2 this side of the page for calculating a profit; is
3 that correct?

4 MR. ESCOBAR: Objection to the form.

5 A. That's correct.

6 Q. (BY MR. AZORSKY) And -- and what is the
7 formula -- formula on the worksheet --

8 A. What --

9 Q. -- that a salesperson was to use with Dey's
10 customers for calculating the Dey unit-dose estimated
11 profit from the -- from the sale of multi-dose
12 Albuterol?

13 MR. ESCOBAR: Objection to the form.

14 A. It's the same formula that was used for the
15 multi-dose in the case of the multi-dose, except that
16 this was the total reimbursement that the client would
17 get from the Dey product minus the cost that the
18 client would pay for the Dey product and that would
19 leave you what -- the Dey unit-dose estimated profit.

20 Q. (BY MR. AZORSKY) And that Dey unit-dose
21 estimated profit then is also based upon the spread
22 between the amount that the customer would be
23 reimbursed by the government and the cost to the
24 customer of purchasing that drug; is that correct?

25 MR. ESCOBAR: Objection to the form.

Selenati, Helen - May 4, 2005 09:06:00 a.m.

159:1 A. That is correct.

2 Q. (BY MR. AZORSKY) You indicated that this
3 reimbursement comparison worksheet was commonly used
4 by Dey's sales force?

5 MR. ESCOBAR: Objection to the form and
6 mischaracterizes the testimony.

7 MR. AZORSKY: I believe that was exactly
8 her testimony.

9 A. It was -- it was commonly used in the sales
10 force. Worksheets like this were used for many other
11 products as well.

12 Q. (BY MR. AZORSKY) And when you say worksheets
13 like this were used for other products, what types of
14 worksheets were used -- like this were used for other
15 products?

16 A. Worksheets like this to -- to -- to determine
17 the spread between the Dey -- the spread offered to
18 the client for the Dey product and the -- versus the
19 spread offered to the client by a competitor product.

20 Q. Do you remember what other products those
21 worksheets related to?

22 A. Well, I would imagine it was used for
23 cromolyn and it was used for ipratropium later on. I
24 mean, this was -- this was a format that was commonly
25 used.

Selenati, Helen - May 4, 2005 09:06:00 a.m.

160:1 Q. Well, I'm not asking you to speculate. I'm
2 asking you based upon your --

3 A. Specific recall.

4 Q. -- your recollection do you recall what other
5 products' worksheets such as this that calculated
6 profits from the spread --

7 A. I think it was --

8 Q. -- related to?

9 A. I think I remember it being used in the Intal
10 Fisons' situation.

11 Q. And that's cromolyn sodium?

12 A. Cromolyn sodium.

13 Q. Now, at the very bottom of Exhibit 36 in
14 small print, do you see a line across the bottom
15 that's in small print?

16 A. Yes, I do.

17 Q. Can you read that?

18 A. "Albuterol sulfate inhalation Solution 0.083%
19 (potency expressed as Albuterol)." "Copyright 1995
20 DEY Laboratories." Napa, California 94558. March '95
21 and 09-338-00 and then I don't know what it says after
22 that. "PROFIT" -- yeah, PROFITGN XLS."

23 Q. Focusing on the -- the small print on the
24 bottom right of the page, do you know what 3/95 refers
25 to?

Selenati, Helen - May 4, 2005 09:06:00 a.m.

161:1 A. I think that was March of '95.

2 Q. Do you know what date that refers to?

3 A. What date in March?

4 Q. No. What -- what is significant about March

5 '95?

6 MR. ESCOBAR: Objection to the form.

7 Q. (BY MR. AZORSKY) As noted on this page?

8 MR. ESCOBAR: Objection.

9 Q. (BY MR. AZORSKY) Do you know why it's noted
10 there?

11 A. That was probably when this document was
12 created.

13 Q. How about the number after that, the
14 09-338-00, do you know what that is?

15 A. I think it might be the product number. I
16 don't know. This wasn't my document.

17 Q. When you say this wasn't your document,
18 what -- what do you mean?

19 A. I didn't generate this document. So whoever
20 generated this document put a footer in here what
21 their reference is so that they could probably find it
22 somewhere in the computer filing system.

O. Please turn to the Pamela Marrs Exhibit 37.

24 A. (Witness complies).

25 MR. AZORSKY: Do you have that?

Selenati, Helen - May 4, 2005 09:06:00 a.m.

192:1 A. I beg your pardon?

2 Q. Do you recall an incident involving Mr. Uhl
3 and a Florida customer known as Pharmacy Factors?

4 A. I think that might have been the pharmacy
5 where he first ran into the problem with the Warrick
6 spread being better than the Dey spread.

7 Q. Well, please tell us everything you remember
8 about what Mr. Uhl told you or that you otherwise
9 learned about what Mr. Uhl discovered in that regard.

10 MR. ESCOBAR: Objection to the form,
11 compound.

12 A. Ross Uhl contacted head office with the news
13 that Warrick was beating us on spread at one of his
14 customers in Florida and I -- and I -- I think I
15 remember it was Pharmacy Factors, but I'm not a
16 hundred percent sure. And he mentioned that he
17 couldn't -- this was a good client and he couldn't get
18 our product sold into the client any longer because
19 the client said -- objected to our product on the
20 basis that they were getting a better spread on the
21 Warrick product.

22 MR. McDONALD: Objection, nonresponsive.

23 Q. (BY MR. AZORSKY) What was the reaction, if
24 any, at Dey to Warrick's action in having a -- a
25 larger spread for its Albuterol product than Dey's